IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 246 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

EXPRESS HOTEL (P) LTD - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR RAMKRISHNA B DAVE for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 15/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The following common question has been referred by the

Income Tax Appellate Tribunal under section 256(1) of the Income Tax Act, 1961 (the Act) for assessment years 1978-79 to 1982-83:

> “Whether, the appellate Tribunal is right in law and in facts in deleting the addition made by the ITO on account of the business receipt of the assessee under the head “Luxury Tax” regardless of the fact that such a liability had been disputed by the assessee in the courts of law?”

2. It is common ground between the parties that the Tribunal has followed its own order for assessment year 1983-84 in assessee's own case. Today, by a judgement rendered in ITR No.47 of 1995 in case of the assessee for assessment year 1983-84, it has been held that Tribunal was justified in law in directing the Assessing Officer to allow the deduction of the statutory liability of luxury tax collected by the assessee. Applying the ratio of the said decision to the facts of the case, the question referred is answered in the affirmative i.e. in favour of the assessee and against the revenue.

3.The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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